

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Pamela McNeer (Respondent) has a CalPERS long-term care insurance policy (Policy) issued under the authority of the Public Employees' Long-Term Care Act (LTC Act). Respondent obtained coverage under the 1998 Long-Term Care Comprehensive Plan.

Under the LTC Act, CalPERS' Board of Administration has the jurisdiction and authority to administer the California Public Employees' Long-Term Care Program (LTC Program). The LTC Program is a self-funded program designed to cover costs associated with qualified long-term care services and is administered by the Long-Term Care Group, Inc. (LTCG)¹.

In December 2021, Respondent moved to Greenwood Place (Greenwood), an assisted living facility in Florida. On January 28, 2022, Respondent submitted a claim for reimbursement to the LTCG under her Policy.

On January 15, 2022, Greenwood's Executive Director and Licensed Vocational and Practical Nurse evaluated Respondent and prepared a written evaluation form. According to the January 2022 evaluation, Respondent did not require assistance with any of the Activities of Daily Living (ADL's).² On February 14, 2022, the Executive Director completed a Claimant Care Needs Assessment form specific to the LTC Program. The form required a score to be given for the level of assistance Respondent needed in each ADL on a scale from 1 to 6; 1 being "no assistance is provided, resident is independent." Respondent received a 1 for all ADL's. On May 17, 2022, Greenwood reevaluated Respondent. According to the May 2022 evaluation, Respondent required assistance with bathing, but did not require assistance with the other five ADL's.

According to the 1998 Evidence of Coverage (EOC), LTCG will pay benefits when a claimant cannot perform three or more of the ADLs without substantial assistance or required substantial supervision due to severe cognitive impairment. A rider to the EOC provided coverage if the claimant could not perform two or more ADLs without substantial assistance.

LTCG denied Respondent's claim because she did "not meet the Conditions for Receiving Benefits because [she did] not require substantial assistance with at least 2 Activities of Daily Living for at least 90 days nor [did she] have a severe Cognitive Impairment requiring substantial supervision."

LTCG's determination was based on review of the January 2022 evaluation; the May 2022 Claimant Care Needs Assessment form and the Resident Health Assessment for

¹ A company called Illumifin bought LTCG in April 2022, but for consistency, this summary will refer to the entity as LTCG throughout.

² There are six ADLs: bathing, dressing, toileting, transferring, continence care and eating.

Assisted Living Facilities completed by Greenwood's resident physician which rated Respondent as "Independent: Staff does not assist at all" for all six ADL's.

Respondent submitted a request for reconsideration to the LTCG. LTCG denied the request on the same basis that it denied her original application. Respondent filed an appeal with CalPERS. In October 2022, CalPERS denied the claim.

In January 2023, Respondent appealed this determination and exercised her right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH). The hearing took place on March 28, 2024. Respondent was not represented by counsel at the hearing, but her son assisted her throughout the process.

LTCG presented testimony to establish that LTCG relied on information from Greenwood when it denied Respondent's application and request for reconsideration. LTCG also explained that on September 26, 2023, Respondent was approved for LTC benefits from that date forward.

Respondent believes that she should have been eligible from June 1, 2022 through September 25, 2023, because she has suffered from incontinence for many years. At hearing, she presented medical documents showing a history of urinary incontinence. She believes her incontinence combined with her need for assistance while bathing, constitute two qualifying ADLs and therefore entitle her to reimbursement.

LTCG acknowledged Respondent's history of incontinence. However, LTCG explained that there is no documentation in her medical records to indicate her incontinence required either the physical assistance or presence of another person. Thus, her incontinence did not count as an ADL for which she needed "substantial assistance" as the EOC defines the term. LTCG is bound by the terms of the EOC.

CalPERS' Program Representative testified that upon review of the file, CalPERS determined that LTCG complied with the EOC and concluded it was appropriate to deny Respondent's application for care before September 26, 2023.

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent's appeal. The ALJ found that the facts are essentially undisputed. The ALJ found that the EOC defines the terms and conditions for coverage and benefits. In this matter, to be eligible for coverage, Respondent must establish that she has a deficiency in two or more ADLs requiring substantial assistance.

The ALJ found that Respondent did need assistance with bathing as of May 17, 2022. However based on the undisputed facts, Respondent was eligible for benefits when she could not perform two or more ADLs without substantial assistance. Under the EOC, "substantial assistance" meant the need for physical assistance or presence of another person. The ALJ found no evidence that Respondent required "substantial assistance" with her incontinence. Therefore, between June 1, 2022 and September 23, 2023, she

needed substantial assistance with only one ADL: bathing. Consequently, CalPERS properly denied her claim for coverage during that period.

For all the above reasons, staff argues that the Proposed Decision should be adopted by the Board.

June 12, 2024

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Attorney